

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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JEFFREY ROCQUE, as Executor of the State of :
Gwen Rocque; and LAWRENCE ROCQUE, :
Individually, :
Plaintiffs, :

v. :

VISITING NURSE SERVICE OF NEW YORK; :
VNS HEALTH; VISITING NURSE SERVICE :
OF WESTCHESTER, INC.; VNS :
WESTCHESTER; and CALVARY HOSPITAL, :
INC., :
Defendants. :

ORDER

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On April 5, 2023, defendants Visiting Nurse Service of New York and VNS Health filed a partial motion to dismiss the complaint pursuant to Fed. R. Civ. P. 12(b)(6). (Doc. #45).

Accordingly, it is hereby ORDERED that, by no later than April 17, 2023, plaintiffs must notify the Court by letter whether they (i) intend to file an amended complaint in response to the motion to dismiss, or (ii) will rely on the complaint that is the subject of the motion to dismiss.

If plaintiffs elect not to file an amended complaint, the motion will proceed in the regular course, and the Court is unlikely to grant plaintiffs a further opportunity to amend to address the purported deficiencies made apparent by the fully briefed arguments in Visiting Nurse Service of New York and VNS Health's motion. See Loreley Fin. (Jersey) No. 3 Ltd. v. Wells Fargo Sec., LLC, 797 F.3d 160, 190 (2d Cir. 2015) (leaving "unaltered the grounds on which denial of leave to amend has long been held proper, such as undue delay, bad faith, dilatory motive, and futility"); accord F5 Cap. v. Pappas, 856 F.3d 61, 89–90 (2d Cir. 2017). The time to file opposing and reply papers shall be governed by the Federal Rules of Civil Procedure and the Local Civil Rules, unless otherwise ordered by the Court.

If plaintiffs elect to file an amended complaint, they must file the amended complaint by

no later than 14 days after notifying the Court of their intent to do so. Within 21 days of such amendment, defendants Visiting Nurse Service of New York and VNS Health may either: (i) file an answer to the amended complaint; (ii) file a motion to dismiss the amended complaint; or (iii) notify the Court by letter that they are relying on the initially filed motion to dismiss.

Further, within 21 days of such amendment, defendants Visiting Nurse Service of Westchester, Inc.; VNS Westchester; and Calvary Hospital, Inc., may either: (i) file an answer to the amended complaint; or (ii) file a motion to dismiss the amended complaint.

Dated: April 6, 2023
White Plains, NY

SO ORDERED:

A handwritten signature in black ink, appearing to read 'Vincent Briccetti', written over a horizontal line.

Vincent L. Briccetti
United States District Judge